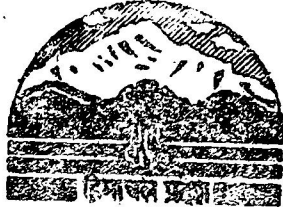


रजिस्टर्ड नं० पी०/एस० एम० 14.



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश, राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, 1 मार्च, 1986/10 फाल्गुन, 1907

हिमाचल प्रदेश सरकार

ELECTION DEPARTMENT

NOTIFICATION

Shimla-171002, the 24th January, 1986

No. 3-3/86. E.L.N.—The Election Commission of India's Notification No. 82/HP-LA/5/85, dated the 24th December, 1985, corresponding to pausa 3, 1907, containing the Judgement dated the 4th December, 1985, of the High Court of Himachal Pradesh at Shimla in Election Petition No. 5 of 1985, is hereby published for general information.

By order,
ATTAR SINGH,
Chief Electoral Officer,
Himachal Pradesh.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan
Ashoka Road,
New Delhi-110001.

24th December, 1985

Dated—
Pausa 3, 1907 (Saka).

NOTIFICATION

No. 82/HP-LA/5/85.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgement dated the 4th December, 1985 of the High Court of Himachal Pradesh, Shimla, Election Petition No. 5 of 1985.

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Misc. Petition No.
Writ Petition No.

Election Petition
No. 5 of 1985.

Appeal No.
Revision Petition No.
Civil Suit No.
Date of decision December 4, 1985

Kashmiri Lal

... Petitioner.

Versus

Vijay Kumar Joshi & ors.

... Respondents.

Ceram:

The Hon'ble Mr. Justice T.R. Handa, J.
The Hon'ble Mr. Justice
The Hon'ble Mr. Justice.

Whether approved for reporting?

For the Petitioner(s)
For the Respondent(s)

Shri M.G. Chitkara, Advocate.
Shri Inder Singh, Advocate, for respondent No.1
Shri R.K. Gautam, Advocate, for respondent No. 2.

T. R. HANDA, J.

Consequent upon the dissolution of the last Legislative Assembly of the State of Himachal Pradesh with effect from 23rd January, 1985, the Election Commission of India *vide* its notification, dated 1st February, 1985, called upon the constituencies in this State to elect their representatives to constitute the new Himachal Pradesh Legislative Assembly. The following election programme was notified by the Election Commission of India:—

- | | |
|---|---------------|
| 1. Last date for filing nominations | .. 8-2-1985. |
| 2. Date of scrutiny | .. 9-2-1985. |
| 3. Last date of withdrawal of nominations | .. 11-2-1985. |
| 4. Date fixed for polling. | .. 5-3-1985. |

After the last date fixed for withdrawal of nominations there remained only three candidates in the filed to contest the election from 31-Santokhgarh Assembly Constituency. These three candidates were (i) Shri Kashmiri Lal, the present petitioner, a nominee of the Bhartiya Janata Party, (ii) Shri Vijay Kumar Joshi respondent No. 1, a nominee of the Congress (I) party and (iii) Shri Dharam Singh respondent No. 2, a nominee of CPM.

The poll was held on March 5, 1985 as scheduled and the result was declared on the following day. Shri Vijay Kumar Joshi, respondent No. 1, polled the highest number of votes being 15,591. Immediately trailing behind him was the present petitioner who polled 15,062 votes. Respondent No. 2 Shri Dharam Singh could poll only 1,451 votes. Respondent No. 1 Shri Vijay Kumar Joshi thus having secured the maximum number of votes was declared elected.

The petitioner who obviously is not satisfied with the result of the election has filed the present election petition under Sections 80/81 read with Sections 100/101 of the Representation of People Act, 1951 (hereinafter called "the Act") praying for the following reliefs.

- (i) the election of respondent No. 1, be declared void and set aside; and
- (ii) after setting aside the election of respondent No. 1, the petitioner be declared elected in his place.

The petitioner seeks to challenge the election of respondent No. 1 on the following grounds.—

1. The result of the election in so far as it concerns the retired candidate had been materially affected by improper reception, refusal and rejection of votes as also by reception of void votes in favour of the returned candidate besides there being non-compliance of the provisions of the act and the rules framed thereunder. The details of the irregularities and errors alleged to have been committed in the process of receiving, rejecting and counting of votes have been mentioned in paragraphs 6, 7, 9 and 10 of the petition.
2. Respondent No. 1 in furtherance of the prospects of his election obtained and procured the assistance of a number of gazetted officers of the State Government as named in para 12 of the petition and thereby committed the corrupt practice falling within the purview of Section 123 (7) of the Act. The particulars of this corrupt practice are stated in para 12 of the petition.
3. Respondent No. 1 committed the corrupt practice of 'bribery' as defined in section 123 (1) of the Act inasmuch as gifts, offers and promises of gratification to the voters of his constituency were made by him or by his agents and workers acting with his consent with the object to induce the voters to vote in his favour and bargains were also struck between respondent No. 1 and the voters pursuant to the aforesaid gifts, offers and promises of gratification. The details and particulars of various gifts, offers and promises made by and on behalf of respondent No. 1 and the bargains alleged to have been settled between him and the voters are given in para 11 of the petition.
4. Respondent No. 1 and other persons acting with his consent and as named in Paras 11 and 12 of the petition interfered with the free exercise of electoral rights of the electors in the Constituency and induced them to vote for respondent No. 1 and thus respondent No. 1 committed the corrupt practice of 'undue influence' falling within the ambit of section 123 (2) of the Act. Full particulars of this corrupt practice find mention in para 14 of the petition.
5. The scrutiny and counting of the postal ballot papers was not done in the presence of the petitioner or his counting agents as required under the rules.

Respondent No. 2 in his reply filed to the petition, supported the claim of the petitioner.

Respondent No. 1, in his reply to the petition raised various preliminary objections which, however, were not later pressed and, therefore, need not be stated. On merits, he denied if there was any irregularity in the process of counting or if any objection against any such irregularity was taken

by any of the candidates during the course of counting. As per respondent No.1, the counting had been done in accordance with law and the rules and no infirmity was attached thereto. With respect to the corrupt practice alleged to have been committed by him, the respondent No.1 made a complete and specific denial of all the material facts which had been pleaded in the petition in support of the commission of such practices. A detailed reference to the particulars of the corrupt practices as pleaded in the petition and the manner in which the same were repudiated would be found in a subsequent part of this judgment while discussing the individual corrupt practices alleged to have been committed by respondent No.1, and, therefore, need not be detailed at this stage.

On the pleas of the parties, the following issues were struck.

1. Whether the statement of facts as found in Paragraphs No. 6, 7 & 10 of the petition and on which are founded the allegations of irregularities and illegalities in counting are sufficient to justify ordering of inspection and recount of the ballot papers?
2. Whether respondent No.1 obtained and procured assistance for the furtherance of his election prospects from the gazetted officers of the Himachal Pradesh State Government as named and in the manner alleged in paragraph 12 of the petition ?
3. Whether respondent No.1, committed corrupt practices of bribery as alleged in paragraph No. 11 of the petition ?
4. Whether respondent No.1 himself or through his agents or any other person with the consent or the consent of his election agents interfered with the free exercise of the electoral rights of the electors as alleged in para No. 14 of the petition?
5. Whether the election petition as framed meets the requirements of section 83 of the Representation of People Act? If not, to what effect?
6. Whether the postal ballot papers were counted without notice and in the absence of the petitioner ? If so, its effect ?

Issue No. 1:

It is not disputed that the counting took place at Mini-Secretariat, Una and as many as 26 tables were employed for the process of counting.

It is also not in dispute that the candidates as also their counting agents were present throughout the process of counting. The irregularities and errors alleged to have been committed in the process of counting and against which the petitioner had ventilated his grievance are stated in para 6 of the petition. As per allegations made in this paragraph the so called irregularities and errors were committed only at 6 out of 26 counting tables. The tables on which such irregularities or errors are alleged to have been committed are tables No. 3,4,7,9,22 and 23. P.W 3 Ranbir Singh was the counting agent of the petitioner at table No. 23 whereas PW 4. Sh. Varinder Kumar, was the counting agents of the petitioner at table No. 4. Both these counting agents of the petitioner while in the witness box made a categorical statement that they had no complaint against the counting at their respective tables. Suresh Kumar (PW 5) was the counting agent of the petitioner at table No. 7. He deposed that in the process of counting the counting staff had been making announcements with respect to the number of votes polled by each candidates and he had been taking notes of such announcements. After 15 or 20 days of the declaration of the result of election when the petitioner obtained a certified copy of the result, the witness claims to have detected that the number of votes polled pertaining to polling station No. 7 as given in the certified copy of the result was different from the notes recorded by him on the basis of the announcements made in the counting hall. The witness, however, did not care to give details of the difference found in the number of votes as shown in the result sheet and the notes taken by him in respect of the votes polled by each candidate Nor did he care to state if this difference was in favour or against the petitioner. The notes alleged to have been taken were neither produced nor relied upon. Apart from that the petitioner in his petition had made no such grievance. The complaint of the petitioner with respect to table No. 7

as found in sub-para (iv) of para 6 was that 93 votes clearly marked in favour of the petitioner were wrongly mixed in the votes polled by respondent No. 1. PW-5. Suresh Kumar, the counting agent of the petitioner, however, refused to support such an allegation. P.W-6, Parkash Singh and P.W-7, Birbal Sain, were the counting agents at table No.9 of Dharam Singh respondent No. 2 and the petitioner respectively. As per Birbal Sain, the counting agent of the petitioner, some votes at the table No. 9 polled in favour of the petitioner were kept aside as doubtful votes on the pretext that the stamps marked on such votes were not in order. He, however, did not care to state if any of such doubtful votes was later scrutinized, or rejected in his presence. His further statement was that the counting of votes was done in a hurry and he could not verify the correctness thereof. The allegations in the petition with respect to table No.9, however, were that votes validly marked in favour of the petitioner were wrongly mixed up with the votes of respondent No. 1. This allegation was not supported by Shri Birbal Sain, the counting agent of the petitioner. Shri Parkash Singh (PW6), the counting agent of respondent No. 2 on this table stated that the counting was going on alright. Later, however, he did state that some votes of BJP, that is, of the petitioner and of Dharam Singh, respondent No. 2, were being put in the box meant for Congress (I) candidate. He, however, did not care to note the serial number of such ballot papers and expressed his inability to assign any reason for this omission. He next stated that he raised an objection with respect to the above irregularity before the Returning Officer suggesting thereby that no such objection was raised before the counting officer or the counting Supervisor who were the proper authorities to complain in the first instance. There is thus practically no evidence to support the petitioner's case that irregularities or errors as mentioned in para 6 of the petition were committed on any of the tables No. 4, 7, 9 and 23. No counting agent from the other two tables, namely table No. 3 and table No. 22 was examined. According to the petitioner his counting agent at table No. 3 was one Mohan Lal who told him about the irregularities committed on that table. This Mohan Lal has not been examined and in his absence the version as given by the petitioner is only a hear say and deserves no notice. Sadhu Singh was the counting agent of the petitioner at table No. 22. This Sadhu Singh too has not been examined. The petitioner while in the witness box had admitted that he had no personal knowledge with respect to the facts mentioned in any part of para No 6 of the petition. He, therefore, could not be in a position to vouchsafe the correctness of his allegations made in that paragraph. His counting agents alone were in a position to depose about the truth or otherwise of such allegations. Those out of them who have been examined have, as stated above, refused to support these allegations. The omission on the part of the petitioner to examine the rest would justify the inference that if they had been examined, they would also have refused to support this version. The petitioner has thus hopelessly failed to prove his allegations with respect to the irregularities and errors committed in the process of counting as detailed in para No. 6 of the petition.

The further grievance of the petitioner relevant for the purposes of this issue is found in para No. 7 of the petition where it is stated that 52 votes marked in favour of the petitioner pertaining to Polling Station No. 55 and 10 of his votes pertaining to polling station No. 38 had been wrongly rejected by the Returning Officer. Now Rule 56 of the Conduct of Election Rules, 1961 deals with rejection of votes. In terms of sub-rule (3) of Rule 56 before rejecting any ballot paper under sub-rule (), the Returning Officer must allow each counting agent present a reasonable opportunity to inspect the ballot papers though he shall not allow them to handle it for any other purpose. The rejection can be made only on any or more of the grounds as mentioned in sub-rule (2). The petitioner while in the witness box did not venture to state that the aforesaid votes polled by him had been wrongly rejected by the Returning Officer nor did he care to say if he had made any protest to the Returning Officer at the time of rejection of such votes. The Returning Officer in his order, copy of which is found at Ex-P-2 and which was produced by the petitioner himself, has specifically stated that the petitioner used to watch the scrutiny of the doubtful ballot papers at his level and that he never took any objection during the process of counting. Even in the witness box he did not care to state as to how the rejection of the votes was invalid or illegal. Simply because some of the votes were rejected on scrutiny, would not imply that they had been wrongly rejected.

The third and the last grievance against the process of counting which had been made by the petitioner is stated in para No. 10 of the petition. It is stated in this paragraph that the petitioner and his counting agents had been taking objections against the manner in which the counting was taking place and in which the votes were being rejected but no need was paid by the Returning Officer to the objection of the petitioner and his counting agents. On the other hand, the petitioner was told by the Returning Officer that he would hear the objection at the end and when the petitioner applied for recount his petition was rejected. These bald allegations find no support in the evidence as none of the counting agents of the petitioner who have been examined by him, cared to state if they raised any objection during the process of counting or if the Petitioner raised any such objections in their presence during that process or if the Returning Officer gave any assurance that such objection would be heard after the process of counting was over. Ex. P-1 is a copy of the application which the petitioner moved for recount before the Returning Officer. A perusal of this application shows that no specific instance or irregularity or error committed during the process of counting had been mentioned in this application. Nor there is any mention therein if any objection had been raised by the petitioner or his agents during the process of counting. The allegations in this application are of general type and in view of the nature of the allegations made, no infirmity can be found with the order of the learned Returning Officer rejecting this application.

The petitioner as thus miserably failed to establish if any irregularity/error was committed in the process of counting or if any rule or law was violated in the process of counting. The result of the election in so far as the returned candidate is concerned cannot be said to have been materially affected as a result of counting or scrutiny of ballot papers. Nor on the facts established on the record an order for recount or scrutiny of the ballot papers is warranted. This issue is accordingly decided against the petitioner.

The next three issues, namely, issues No. 2 to 4, it may be observed, all deal with one or the other corrupt practices alleged to have been committed by the returned candidate. Before I proceed to examine and appraise the evidence adduced in the case with a view to find out whether these corrupt practices imputed to the returned candidate stand satisfactorily established, it would be well to recall the important principles bearing on the nature and standard of proof required to establish a charge of corrupt practice in election matters. The Supreme Court has, during the past two decades, made several authoritative pronouncements on this topic. Some of these cases which need reference in this connection are:—

1. AIR 1968 Supreme Court 1083, *Mrs. Om Prabha Jain v. Abnash Chand and another.*
2. AIR 1975 Supreme Court, 290, *Rahim Khan v. Khurshid Ahmed and others.*
3. AIR 1977 Supreme Court 587, *Lakshmi Raman, Acharya v. Chandan Singh and others.*
4. AIR 1977 Supreme Court 2171, *Narendra Madivalappa Kheni v. Manikrao Patil and others.*
5. AIR 1979 Supreme Court 154, *Haji C. H. Mohammad Koya v. T.K.S.M. Authukoya.*
6. AIR 1984 Supreme Court 960, *A. Younus Kunju v. R. S. Unni and others.*
7. AIR 1984 Supreme Court 1161, *Manmohan Kalra v. Shri Yash and others.*
8. AIR 1985 Supreme Court 89, *Surinder Singh v. Hardial Singh and others.*

The broad principles which can be deduced from the pronouncements made by the Supreme Court in these authorities may be summarised thus:—

- (i) a charge of corrupt practice is substantially like a criminal charge. Election petitions where corrupt practices are imputed must, therefore, be regarded as proceedings of quasi-criminal nature. In such proceedings a grave and heavy onus lies on the accuser to establish each and every ingredient of the corrupt practice charged and this has to be done by adducing clear, cogent, un-equivocal and unimpeachable evidence.
- (ii) a charge of corrupt practice cannot be established by a mere balance of probabilities. Whereafter giving due consideration to the totality of the evidence and circumstances of the case, the mind of the Court is left reeling with reasonable doubt, not being the doubt of a timid and vacillating mind, as to the veracity of the charge, the Court must declare the charge as not proved.

- (iii) particulars of a corrupt practice must be pleaded in a clear and precise language and that what is not pleaded may not be allowed to form the subject matter of evidence.
- (iv) where a charge of corrupt practice is sought to be established only or mainly by oral evidence without there being contemporaneous documents of unimpeachable and unequivocal character to support it, the Court should be very careful and circumspect in scrutinizing such evidence and normally should not act upon it unless from its very nature the evidence strikes as credible, trustworthy natural, cogent and shows beyond doubt the commission of the alleged corrupt practice.
- (v) an election being a politically sacred act reflecting the collective will of the whole constituency, the Courts, must to the extent possible, respect this public expression and be extremely reluctant to set aside or declare void an election except where clear, cogent and convincing testimony is adduced leaving no choice for the court but to uphold the charge of corrupt practice levelled against the returned candidate.

Bearing in mind the principles quoted above, I would now venture to scrutinize the evidence appearing of the record and return my findings on the issues involving the allegations of corrupt practice.

Issue No. 2:

This issue is founded on the allegations that respondent No. 1 for furtherance of his prospects at the election obtained and procured the assistance of S/Shri Gian Singh, G. L. Sharma, Chaudhary Ved Parkash, C.L. Chadha and S. S. Malhotra all of whom were at the relevant time holding gazetted posts in the State Government. In the absence of any evidence in that regard, Shri Chitkara, the learned counsel for the petitioner, neither pressed nor argued in respect of the plea that respondent No. 1 had procured or obtained any assistance from S/Shri G. L. Sharma, Chaudhary Ved Parkash, C. L. Chadha and S. S. Malhotra. He restricted his arguments only to the assistance alleged to have been obtained by respondent No. 1 from Shri Gian Singh who at the relevant time was posted as Block Development Officer, Una. Now with respect to Shri Gian Singh, the allegations of the petitioner is found in Para 12(A) of the petition in the following terms:—

- “(a). That Shri Gian Singh, the Block Development Officer was not concerned with the affairs of Santokhgarh notified area committee of which the Sub-Divisional Magistrate is the Executive Head. But the respondent No. 1 placed his discretionary grants at the disposal of Shri Gian Singh, B.D.O. Una, who was not at all concerned with the electors of the Santokhgarh area and he could not have actively dealt with the same. The same was done intentionally by respondent no 1, as Shri Gian Singh was helping him in his election campaign and was interested in the success of respondent No. 1. Shri Gian Singh also threatened the electors of the constituency with the consent of respondent No. 1 in case they do not vote in favour of respondent No. 1, then all the Development programmes of which he is the head, will not be implemented in their areas. He further threatened the electors that the grants which have been placed at his disposal for Santokhgarh constituency for different purposes will not be distributed among them, if they do not vote for respondent No. 1”.

As per first part of these allegations, respondent No. 1 who was holding the office of Deputy Speaker in the previous Legislative Assembly, placed his discretionary grants pertaining to the area falling within the jurisdiction of Notified Area Committee Santokhgarh at the disposal of Shri Gian Singh, Block Development Officer who was in no manner concerned with the affairs of that area. This according to the petitioner, was done as Shri Gian Singh was helping respondent No. 1 in his election campaign.

The evidence adduced on the record simply shows that respondent No. 1 in his capacity as Deputy Speaker of the dissolved Legislative Assembly had sanctioned his discretionary grants on

or before January 22, 1985 and such sanction was conveyed to the concerned quarters *vide* three separate orders which were issued on 22-1-1985. Copies of these orders are found at Ex-P-2x, Ex-P-22 and Ex-P-23. It is the common case of the parties that the entire discretionary grant sanctioned by respondent No. 1 in his capacity as Deputy Speaker is covered by these three orders. Shri Chitkara, the learned counsel for the petitioner did not question the property of sanctioning these grants except with respect to the grants of Rs. 1,000 each sanctioned for the construction of the buildings of Government Primary School for Boys and for Government Primary School for Girls, Santokhgarh which find mention at serial No. 155 and 169 in the office order Ex-P-22. The entries at Sl. No. 155 and 169 in the office order Ex. P-22 reflect that these grant had been sanctioned for the construction of the school buildings at Santokgarh. The sanction was in the name of the Block Development Officer, Una and the executing agency for the construction work was Deputy Commissioner, Una as named in Column No. 5 of the order Ex. P-22. Apart from the issue of this sanction order, no further step appears to have been taken towards the disbursement and utilization of these grants either through the Block Development Officer or through any other agency. In any case, the petitioner did not care to adduce any evidence to that effect. Respondent No. 1, on the other hand, examined Shri Gian Singh, the then Block Development Officer, Una, as R.W-29. This witness stated in unequivocal terms that he received no amount out of the discretionary grant sanctioned by respondent No. 1 in his capacity as Deputy Speaker of the dissolved assembly till the end of March, 1985. It was, as per this witness, only in April, 1985, long after the result of the present election was declared, that he received the amount of this discretionary grant which he later disbursed during August, 1985. In cross-examination he deposed that he learnt about the sanction of the discretionary grants by respondent No. 1 only on 23-3-1985 when he received intimation to that effect from the Deputy Commissioner, Una. He had brought in Court the original intimation which he received from the Deputy Commissioner Una in that regard. While admitting that the Block Development Officer was not the executing agency for construction of school buildings within the limits of Notified Area Committee Santokhgarh, the witness explained that it was within the competence of the sanctioning authority to nominate the Block Development Officer for the execution of any work within such limits as well. It may be observed that while in the witness box, the respondent No. 1 was never questioned as to why he had nominated/appointed the Block Development Officer, Una, for executing the construction work of the schools falling within the limits of Notified Area Committee Santokhgarh. Thus all that the evidence on record shows is that respondent No. 1 on or before 22-1-1985, that is, before the issue of the notification calling upon the constituencies in the State to elect their representatives, had sanctioned certain amount from his discretionary grants including two amounts for Rs. 1,000 each for the construction of Primary School buildings falling within the limits of Notified Area Committee, Santokhgarh and that the Block Development Officer Una had been named by him for executing that construction work. The Block Development Officer could very well be entrusted with this job in his official capacity. The fact, however, remains that no further step was taken pursuant to that sanction order and the amounts sanctioned *vide* that order were actually disbursed and utilized much after the result of the present election had been declared. In the circumstances, the mere issue of sanction order Ex. P-22 cannot suggest that respondent No. 1 procured or obtained the assistance of Shri Gian Singh, Block Development Officer, Una.

The other material allegation made in para 12(a) of the petition (extracted above) is that Shri Gian Singh with the consent of respondent No. 1 threatened the voters of this Constituency that in case they did not vote for respondent No. 1 the development programmes of which he was the head, would not be implemented in their area nor the grants placed at his disposal in Santokhgarh Constituency for different purposes would be disbursed. These allegations *prima-facie* look quite natural and inspire no confidence. No particulars have been furnished in any part of the petition as to when, where and in whose presence such threats were extended to the voters by Shri Gian Singh. Shri Chitkara, the learned counsel for the petitioner, wanted me to refer to the contents of sub-para (a)(b) and (e) of paragraph 11 of the petition for looking into the requisite particulars in support of this allegation. I have carefully gone through the contents of the above mentioned sub-para of paragraph 11 of the petition but find myself unable to trace the particulars of the alleged corrupt practices which forms subject matter of this issue. In fact such particulars are not to be

found in any part of the petition. Paragraph 11 of the petition mentions of various election meetings alleged to have been organised by respondent No. 1 during the period 6-2-1985 to 1-3-1985. It is alleged that Shri Gian Singh, Block Development Officer, was present along with respondent No. 1, in three of such meetings which were held on 6-2-1985 at Santokhgarh, Bathri and Kungrath. Sub-para (a)(b) and (e) of paragraph 11 of the petition refer to these three meetings. There is, however, no further allegation if Shri Gian Singh apart from his presence, played any role in any of these meetings except in the meeting alleged to have been held at Kungrath. With respect to the meeting at Kungrath the relevant allegations regarding the role of Shri Gian Singh, Block Development Officer are in the following language:

“In this meeting Shri Gian Singh also spoke and told the gathering that he will get the wall constructed only if they vote for respondent No. 1.”

There is no mention whatever if any threat was extended by Shri Gian Singh, to the voters as pleaded in para 12(a). Nor is there any plea if Shri Gian Singh spoke to the gathering of that meeting at the instance or with the consent of respondent No. 1. It is, therefore, just not possible to connect the allegations made in paragraph 11(e) of the petition with the corrupt practice which has been charged against respondent No. 1 in paragraph 12(a) of the petition. The allegations, therefore, that Shri Gian Singh extended any threat to the voters at the instance of respondent No. 1, in the absence of requisite particulars as when, where and in whose presence these threats were extended, would not call for any investigation.

I would, in the circumstances, conclude that the petitioner has miserably failed to establish of respondent No. 1 procured or obtained the assistance of any of the gazetted officers named in para 12 of the petition for furtherance or his prospects at the election and committed the corrupt practices falling within the purview of section 123(7) of the Act. This issue is also found against the petitioner.

Issue No. 3:

The corrupt practice of bribery imputed to respondent No. 1 and giving rise to this issue is founded on the allegations set out in para No. 11 of the petition. The case of the petitioner in brief is that respondent No. 1 misused the discretionary funds which had been placed at his disposal in his capacity of Deputy Speaker of the dissolved Legislative Assembly for bribing the electors with a view to inducing them to vote for him. In addition respondent No. 1 abused his office of Deputy Speaker and promised prompt electricity and water connections to the voters of the constituency in return of their promises to vote for him and then got such connections actually installed by exercising his influence with the concerned authorities ignoring the prescribed rules and norms. All such acts amounting to the commission of corrupt practice of bribery are mainly alleged to have been committed in the course of various meetings organised by respondent No. 1 in connection with his election campaign during the period 6-2-1985 to 1-3-1985 at different places in his constituency. The details of such meetings as also of the proceedings conducted therein find mention in the various sub-para of paragraph 11 of the petition.

Respondent No. 1 in his reply admitted that he was Deputy Speaker of the dissolved Assembly. His plea, however, is that he ceased to hold charge of that office with effect from 23-1-1985 when that Assembly was dissolved. His further plea is that all the discretionary funds placed at his disposal as Deputy Speaker of the dissolved Assembly had already been exhausted before the Assembly was dissolved on 23-1-1985. There was thus, according to the respondent, no question of his using or abusing his discretionary funds after 23-1-1985. He specifically denied if he organised any election meeting as alleged in the petition or if he held out any promise to the voters to provide them electric or water connections or if he exercised his influence with any authority for arranging water or electric connections in violation of the prescribed rules and norms.

I now proceed to take up for consideration, one after the other, the various instances of bribery

imputed to respondent No. 1 as stated in sub-para (a) to (h) of para 11 of the petition as also the relevant evidence adduced in support thereof.

The first allegation as found in para 11(a) of the petition is that respondent No. 1 held a public meeting at 2.00 p.m. on 6-2-1985 in village Santokhgarh where the following persons were present:

1. Shri Dhanu Ram Bhanjra s/o Dehru Ram, Bhanjra.
2. Smt. Savitri Devi wife of Shri Gina Ram, Bahti.
3. Smt. Kamla Devi w/o Shri Tarsem Lal, Kamahar.
4. Smt. Gurbaksh Kaur widow of Shri Upender Singh.
5. Smt. Sarswati Devi wife of Shri Ram Rakha, Khattri.
6. Shri Tota Ram son of Shri Chura Ram.
7. Shri Madan Lal son of Shri Mangu, Bahti.
8. Shri Ram Rakha son of Shri Bali Ram Saini.
9. Smt. Ram Kaur widow of Shri Bishamber.
10. Shri Motha son of Sunder, Bahti.
11. Smt. Prema Devi widow of Shri Ram Sara, Brahaman.
12. Shri Wattan Chand Saini son of Shri Ram Rakha.

The further allegation is that respondent No. 1 addressed that meeting and the material part of his address in the words used in the petition was like thus:

"He further announced that he has sanctioned certain grants from his discretionary funds for this village and read out the names of the above 14 persons as the beneficiaries thereof. He declared that he had sanctioned a sum of Rs. 2,000/- from the discretionary fund for getting the building of the Government Primary School for Boys and the Government Primary School for Girls, Santokhgarh constructed. He said that the aforesaid grant has been placed at the disposal of Shri Gian Singh, Block Development Officer. Then he said that though the grants have been sanctioned, but the same will be paid to them only if they voted in his favour and also work for him in the elections. He further threatened that if they did not vote for him in the elections, then he will get the grants cancelled and he will also tell Shri Gian Singh not to release the grant for the construction of the Schools. The gathering was induced to cast votes in his favour on the promise that the grants will be given before the elections, whereupon respondent No. 1 promised to arrange the money drafts within a day or so."

In his affidavit filed along with his amended election petition, the petitioner had verified the correctness of the above mentioned allegation on the basis of information received by him from the persons named above. None of them, however, was examined at the trial. On the other hand the petitioner sought to prove this allegation from the oral testimony of PW 8, Bal Kishan PW 9, Shri Birbal Singh, PW 10, Shri Jaswant Singh and PW 18 Shri Salig Ram. PW 10, Shri Jaswant Singh, outright refused to support this allegation by deposing that he never attended any election meeting at Santokhgarh during the last Assembly elections. PW 8, Shri Bal Kishan too refused to support the petitioner in the sense that he gave quite an innocuous version of this meeting. According to him, respondent No. 1, in that meeting told the gathering that some grants had been received and the same would be distributed among the poor. Respondent No. 1 also announced the grant of Rs. 1,000/- for the Girls Higher Secondary School, Santokhgarh. Apart from these two sanctions from the discretionary funds of respondent No. 1, this witness deposed nothing regarding the role played by respondent No. 1 in that meeting on 6-2-1985. PW 9 Shri Dilbag Singh did, of course, try to support the petitioner but in his own way. Giving an account of the meeting, this witness deposed "Vijay Kumar Joshi announced on the spot that in case, twelve persons named by him which included seven ladies, vote for him, they would be given a grant of two hundred rupees each. He also made announcement that letters with respect to release of grant of Rs. 1,000/- each for the Government Girls High School and Government High School for Boys for Santokhgarh had been issued and that the grants would be actually paid only if all the persons, present in the gathering promise to vote for him". In his cross-examination the witness deposed that respondent No. 1 repeated the aforesaid

announcement for ten or twelve times during his 15 minutes address to the meeting. It was, according to the witness, only on 12th round of his announcement that the people raised their hands in token of assurance to vote for him. He also added that all the 12 persons in whose favour the grants were announced stood up in that meeting. In reply to yet another question the witness stated that it was for the first time that day in the Court that he deposed about that meeting and that earlier he had not talked about it to anybody. The testimony of this witness is certainly full of suspicion and inspires no confidence. The last witness on this point is Shri Salig Ram (PW 18) who at the relevant time was the Secretary of the District Congress (I) Committee, the political party which had nominated respondent No. 1. He had his own version of this meeting. According to him, this meeting was addressed by respondent No. 1 and the witness himself besides some other persons whose names he could not give. He then added "We asked the gathering to vote for Congress (I). We also assured the gathering that we would redress all the grievances. We also told that we have already released certain grants for them and would also give grants in future. We also told them that the B.D.O., had come with us and that the grants had since been received by him and would be released shortly. The B.D.O., also told the gathering to support Shri Vijay Kumar. The gathering present there assured that they would vote for them in case they give grants and their grievances are attended to". The witness never stated if the names of the beneficiaries of the grants were announced or if any threats were extended to the voters by respondent No. 1 or if any bargains were settled between respondent No. 1 and the voters. In fact he did not refer to the address given by respondent No. 1 in that gathering. On the other hand his depositions suggest that whatever address was given jointly by him and respondent No. 1.

On a combined reading of the testimony of these three witnesses namely, PW 8 Bal Kishan PW 9, Dilbag Singh and PW 18 Salig Ram all of whom claimed to be present at the meeting of Santokhgarh, the only safe conclusion that can be drawn is that none of them has spoken the truth and each one of them had deposed from his own imagination.

✦ The second meeting is alleged to have been organised by respondent No. 1 at Bathri on the same day, that is, 6-2-1985. The material allegations in respect of this meeting are found in para 11 (b). They are like this:

"Respondent No. 1 while addressing the gathering said that he has sanctioned some grants for people of that village who were the voters and read out the names of Smt. Jeeto Devi widow of Chana Ram, Smt. Kamla Devi widow of Shri Karam Chand, Shri Jagdish Ram son of Gokul Ram, Shri Mansa Ram, son of Gokul, Shri Bulxara Ram son of Shri Sangta Ram, Smt. Manso Devi widow of Rakha Ram, Smt. Janki Devi widow of Kanshi Ram, Smt. Amro widow of Kewal Majra Raher, Smt. Charnoo Devi widow of Dina Nath and Smt. Mandir Devi widow of Chuhru Ram Rajput, who were present in the meeting. He further told the gathering that though the grants have been sanctioned, yet they will get the same only if they cast their votes in his favour and work for him in the elections otherwise the grants will be cancelled and withdrawn and they will not get anything. All the above persons were induced to cast their votes in his favour in consideration of the grants being sanctioned and paid to them. Thereupon respondent No. 1 assured that he will send the money to the officials/officer within a day or two and they will receive the same accordingly. Shri Sher Singh Pradhan Gram Panchayat Bathri was present in those meetings."

PW 11, Sher Singh, PW 14, Ram Rakha, and PW 18 Shri Salig Ram are the only witnesses who have been examined to prove the holding of this meeting as also that transpired therein. PW 11, Sher Singh in the first instance stated that respondent No. 1 in that meeting disbursed cash grants of Rs. 200/- each to about seven persons and also gave Rs. 1,000 as grant to Chulu Ram for the Sarai. He then corrected himself and deposed that the grants referred to above were not actually disbursed in that meeting but were only sanctioned. He never stated if there was any threat given to the beneficiaries that the grants would be cancelled in case they did not vote for respondent No. 1 or if there was any inducement to the voters. The testimony of this witness is thus of no help to the petitioner.

PW 14, Shri Ram Rakha, deposed that on 6th day of the second month, the Chowkidar proclaimed in their village that officers were to visit the village on that day and if any person had any grievance he should come and ventilate the same. Thereafter 60 or 70 persons gathered. Referring to the role played by respondent No. 1 in that meeting the witness stated that "Shri Vijay Kumar then called upon the gathering to narrate their grievances to him and he assured them that he would redress the same. Shri Vijay Kumar further announced that out of his discretionary fund he would give grants of Rs. 200/- each to seven of the villagers who are nominated by the gathering. xx

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Shri Vijay Kumar also announced the grant of Rs. 1,000/- for the village Sarai". This witness is totally illiterate. He could not even give the date on which the poll took place. When questioned he gave the date of poll as 22nd or 23rd whereas the poll had taken place on 5th March. The witness was asked to explain as to how he remembered the date of the meeting given by him, namely, 6-2-1985 when he remained mum and could give no answer. It is obvious he was giving some tutored version. In any case even if the deposition of this witness is accepted at its face value, it would not support the version that respondent No. 1 bribed or induced the voters. The third witness namely, Shri Salig Ram (PW 18) only made a passing reference about this meeting by stating that such a meeting was held. He, however, did not care to throw any light on the proceedings of this meeting. The testimony of this witness is of no practical value. Considered in its totality, the evidence as discussed above undoubted falls short of the requisite proof.

On the same day, that is 6-2-1985 the third meeting is alleged to have been organised by respondent No. 1 at village Saloh, Para 11(c) of the petition deals with this meeting. The allegations made in this sub-para are:

"The respondent No. 1 and his workers arranged and organised a meeting with the followers of Guru Ravi Das Satsang Sabha (Regd.), Saloh. District Una, where some persons of other communities were also present. This meeting was held at the ground at 5 P.M. on February, 1985. The Pradhan of the aforesaid Sabha and the Pradhan of Giam Panchayat Saloh were also present on the dias. While addressing the gathering the respondent No. 1 told them that he has sanctioned a sum of Rs. 2,000/- out of his discretionary funds for building a community centre for Harijan Basti in their village. He further stated that he get the money sent to the concerned officer for distribution within a day or two provided they vote for him and work for him in the present election. After respondent No. 1 finished addressing, the Pradhan of the Sabha also addressed the meeting and urged that since respondent No. 1 has offered them a Community Centre for their village, all the Harijans present in the meeting should vote and work for respondent No. 1 in the election. He further promised for himself and on behalf of his community that they will vote for respondent No. 1 in lieu of the grants given by respondent No. 1."

PW. 15, Ram Singh, is the solitary witness who was produced to prove the above mentioned allegation found in para 11(c). This witness did not support the allegation that the meeting at Saloh had been arranged and organised with the followers of Guru Ravi Das Satsang Sabha (Regd.). According to him, it was an ordinary public meeting where respondent No. 1 announced the grant of Rs. 2,000 for Satsang Ghar and then added that respondent No. 1 told the gathering that the grant would be given only in case the gathering vote for him. According to this witness PW. 16, Kul Bhushan and PW. 18 Salig Ram were also present in that meeting inasmuch as PW. 18 Salig Ram had addressed the gathering whereas Kul Bhushan (PW.16) had made a complaint to respondent No. 1 about water shortage and had also made a demand for water connection. Neither PW. 16 Kul Bhushan nor P.W. 18, Salig Ram, however, admitted his presence in such meeting. It is highly unlikely that these two witnesses would not have been questioned about this meeting at Saloh if they were actually present there. The uncorroborated testimony of PW. 15, Ram Singh, in the circumstances narrated above, is considered totally insufficient to prove the allegations made in para 11(c) of the petition.

The next instance of corrupt practice pleaded by the petitioner finds mention in para 11(c) of

the petition. The material portion of this para extracted in the language of the petitioner reads thus:

"While addressing the said gathering respondent No. 1 declared that he has sanctioned a sum of Rs. 1,000 for the construction of street of Mohalla Bhagwala of the village on the asking of the Pradhan of the Gram Panchayat, Shri Ram Pal, who is present. He offered that this money will be given to them only if they voted for him in the present election. After him, Shri Ram Pal Pradhan also addressed the meeting to thank him and promised him that his vote, as well as the votes of the residents of the village will be cast in his favour, in view of the benevolent grants given by respondent No. 1. He further exhorted the gathering that if they want the grant to be paid to them, they should vote for respondent No. 1, otherwise they will not get the same."

These allegations were sought to be proved by the oral testimony of PW 27, Ram Paul and PW. 28, Sardari Lal. Shri Ram Paul appearing as PW 27 did not support the above mentioned allegations. He never stated if respondent No. 1 in his address had declared about the sanction of the grant of Rs. 1,000/- for construction of street or if respondent No. 1 had threatened that the said grant would be given only in case the gathering voted for him. Similarly this witness never stated if he also addressed the gathering as alleged in the petition. All that this witness stated was that the meeting held on 6-2-1985 at Ishpur was addressed by Salig Ram PW, Vijay Kumar respondent and one Bishan Dass. In that meeting the gathering raised some demand which the organisers of the meeting agreed to accede to. Thereafter respondent No. 1 told the gathering to vote for him and the gathering assured him to that effect. Salig Ram PW, it may be stated, had denied if he attended any meeting at Ishpur on 6-2-1985. He was specific in his statement that he had attended only three meetings on 6-2-1985, the first at Santokhgarh, the second at Bathri and the third at Kungrath. He then declared in un-equivocal terms that he attended no other meeting in between 6-2-1985 and 6-3-1985. Sardari Lal (PW 28) the other witness examined on this point, tried to find some support to the allegations as pleaded in para 11(d) extracted above. He, however, did not state if Ram Paul had addressed the gathering or had exhorted the persons present to vote for respondent No. 1 or else they would not get the grants sanctioned by the respondent.

Respondent No. while in the witness box denied if he organised an meeting at Ishpur on 6-2-1985 and no question was put to him on this point in cross-examination. Three other residents of village Ishpur, namely, Daulat Ram (RW. 15), Hazara Singh (RW. 16) and Basant Ram (RW. 17) also pledged their oaths to the fact that no election meeting was held in their village on or about 6-2-1985. Of course, they are all interested witnesses and their evidence cannot be accepted as a matter of course. Applying, however, the standard of proof required in a matter of this type and the principles of which have been enunciated above, it is not possible to conclude even from the un-rebutted evidence of the petitioner that the allegations made in para 11(d) are proved.

The next sub-para, that is, para 11(e) of the petition relates to the last of the meetings alleged to have been addressed by respondent No. 1 on 6-2-1985. This meeting is alleged to have taken place at village Kungrath which is the native village of both petitioner as also of respondent No. 1. The allegations made in this sub-para to the extent they are relevant for the purposes of the issue in hand are as under:

"While addressing the gathering, respondent No. 1 announced that he has sanctioned a sum of Rs. 1,500 from his discretionary funds for the construction of the boundary wall of Government High School in their village. He said that he has placed the grant for construction at the disposal of Shri Gian Singh, B.D.O., who is present on the dias. He further told them that the wall will only be constructed, if they voted for him in the present election. He also told them that if they do not vote for him, then the aforesaid grant will be withdrawn. In this meeting, Shri Gian Singh, B.D.O., also spoke and told the gathering that he will get the wall constructed only if they vote for respondent No. 1. After him Shri Mita Singh, Panch, also spoke to that all the votes will be cast for respondent No. 1 in view of the respondent's granting the benefit to the voters of the village".

PW. 17, Mita Singh, PW. 18 Salig Ram and PW. 19 Prakash Singh are the three witnesses who have been examined on behalf of the petitioner to prove the aforesaid allegations. On a careful scrutiny of the evidence supplied by these three witnesses, I am of the view that no such meeting was held at village Kungrath on 6-2-1985 and that the plea of the petitioner in that regard is founded only on concoction. As per PW. 17, Mita Singh, it was at 12.00 noon the same day that the village Chowkidar Surjit announced that the meeting of Shri Vijay Kumar (respondent No. 1) was in progress where other officers were also present and that they should go and attend the meeting and ventilate their grievances. At then repeated that the Chowkidar came to the village at 12.00 noon. Thereafter he corrected himself by saying that the Chowkidar had announced that the villagers should reach village Kungrath at 8.30 p.m. to ventilate their grievances in the meeting organised by respondent No. 1. The witness obviously made deliberate efforts to improve upon his earlier version about the announcement attributed to the village Chowkidar. I could have believed the later version of this witness if there was only some difference about the timings of the meeting. In his earlier version, however, the witness has made a positive statement that according to the announcement the meeting was in progress where the officers were also present. This could not be an inadvertent statement. This only shows that he was relating some concocted story. Again as per this witness, the meeting at Kungrath was attended by only five persons, namely, S/Shri Prita Bhajja, Beanta, Malkiat Singh and the witness himself. He did not even name Prakash Singh (PW 19) of his village as the person who attended such meeting though Prakash Singh has also put himself into witness box to depose about the proceedings of this very meeting. Prakash Singh in his turn stated that it was Rithoo Chowkidar who had announced at 12.00 during the day that the meeting would take place at 8.30 p.m. in village Kungrath. He named S/Shri Karam Singh, Gian, Puran Singh, Bakshish Singh, Tarsem Lal and Charan Singh who accompanied him to attend that meeting. There were fifty or hundred persons present in that meeting, according to this witness. Sadhu, Ratna and Harbans Lal were the other persons named by him who were present in that meeting. He did not mention the name of Mita Singh as one of the persons who attended that meeting.

Now coming to the proceedings alleged to have been conducted during the course of this meeting, both Mita Singh (PW 17) and Prakash Singh (PW 19) have different versions to give while Salig Ram (PW 18) gave no version whatever. Salig Ram (PW 18) only stated that a meeting was held at Kungrath at 8.00 p.m. on 6-2-1985. This was the only reference that he made in his deposition about this meeting. As per Mita Singh (PW 17), Salig Ram was the first to address this meeting and in his address he told the gathering to make their demands to the Deputy Minister. Thereafter respondent No. 1 addressed the meeting and told the gathering that he had made the water tank for them and had also sanctioned a grant of Rs. 1,500/- Respondent No. 1 is then alleged to have added that the grant would be disbursed only in case the gathering voted for him. Thereafter this witness assured respondent No. 1 that they would vote for him and the grants should be released. After that all the persons present raised their hands and deputed slogans assuring that they would vote for respondent No. 1.

The version given by Prakash Singh (PW 19) is somewhat different. According to this witness, Salig Ram PW in his address told the gathering to vote for respondent No. 1 who had done a lot for them and who had constructed the water tank and also raised the village school to the level of High School. Salig Ram PW, according to this witness, further told the gathering that an amount of Rs. 1,500/- had been sanctioned for raising the school wall and the same would be released in case they vote for him. Thereafter Vijay Kumar respondent told the gathering to vote for him and threatened that in case they did not do so the grant shall be cancelled. He did not mention if Mita Singh gave any assurance to respondent No. 1 on behalf of the gathering or if the persons present in the meeting raised their hands and shouted slogans assuring respondent No. 1 that they would vote for him.

The evidence of these three witnesses, viz., PW. 17, Mita Singh, PW. 18 Salig Ram and PW 19 Prakash Singh considered collectively can by no recognised standard be considered as providing the requisite proof of the allegations made in para 11(e) of the petition.

The substance of the allegations found in the next sub-para, that is, sub-para (f) is that respondent No. 1 took undue advantage of his official status of Acting Speaker and by exercising his influence with the concerned authorities got sanctioned and installed electric connections for various voters of his constituency in lieu of their promises to vote for him. The various instances of electric connections which are alleged to have been sanctioned at the instance of respondent No. 1 are given in this sub-para.

The first of such instances relates to the electric connection installed at the premises of one Prabhu Ram resident of village Saloh on 3rd March, 1985. It is alleged that Prabhu Ram had deposited Rs. 70 as security with the H.P. State Electricity Board on 19-2-1985 for obtaining electric connection and on the back of the receipt issued to him respondent No. 1 made an endorsement found at Ex. P-10 where in he recommended the case of Prabhu Ram for sanction of the electric connection applied for. On such recommendation of respondent No. 1 the connection was sanctioned out of turn. Prabhu Ram to whom the electric connection is alleged to have been sanctioned was not examined at the trial. This version, however, was sought to be established from the mouth of Kul Bhushan who appeared as PW. 16. This witness claimed that he accompanied Prabhu Ram to village Bhatara where they met respondent No. 1 in the presence of several other persons. The witness told respondent No. 1 that he wanted a temporary electric connection on the occasion of marriage in the family which was fixed on 5th March, 1985. Respondent No. 1 then told the witness that he would get the connection installed by 3rd March, but the witness had to write for him. It was after this bargain was settled that respondent No. 1 made his endorsement Ex-P-10 on the back of the security receipt. He also stated that he got the connection later on on 3rd March, 1985. In his cross-examination he admitted that there was no marriage in his family for which connection was required. He also admitted that he had not deposited any security. In fact it was Prabhu Ram who had applied for the connection. This Prabhu Ram was admittedly alive and living in the village. The respondent in rebuttal examined RW 2, B. S. Chandel, the Sub-Divisional Officer State Electricity Board Haroli within whose jurisdiction the area of village Saloh fell. The official record which this witness had brought in court revealed that Prabhu Ram had made an application for electric connection on 19-2-1985 when he deposited Rs. 70 as security deposit vide receipt on the back of which is found an endorsement Ex. P-10 of respondent No. 1. The record further revealed that the security was deposited by Prabhu Ram in two instalments first on 19-2-1985 and the second on 11-3-1985. The electric connection in pursuance to the application of Prabhu Ram dated 19-2-1985 and the security deposit referred to above was actually installed only on 14-4-1985. The second instalment of security deposit was furnished only on 11th March, 1985, when the test report which is pre-requisite for installation of electric connection was also furnished. The story that the electric connection was sanctioned on 3rd March, 1985, at the occasion of some marriage in the family of PW Kul Bhushan is thus obviously false. Respondent No. 1 when the witness box admitted having made the endorsement Ex. P-10 on the back of the security receipt. He, however, explained that he made this endorsement after the election in the third week of March when Prabhu Ram complained to him that he had deposited his security for the last 1-1/2 months but had not been sanctioned the connection. The explanation furnished by respondent No. 1 fits in with the testimony of Shri Chandel. (RW 2) which is supported by the official record. There is thus no substance whatever in the allegation that respondent No. 1 made his endorsement Ex. P-10 in consideration of the promises extracted either from Kul Bhushan PW or from Prabhu Ram to vote for him in the election.

The next instance pleaded is that during his visit to village Nangal Kalan on 26-2-1985, respondent No.1 was confronted by S/Shri Prakash Chand son of Shri Krishan Chand, Uttam Chand son of Pala, Kewal Chand son of Pala Ram, Charanjit son of Shiv Ram, Surinder Kumar son of Sangra Ram of Mohalla Jhungian of that village who accused him of not providing electric connections to them during his tenure as a member of the Legislative Assembly. Respondent No. 1 then offered them that he would get them the electric connections immediately provided they cast their votes and the votes of their family members in his favour. The aforesaid persons then assured respondent No. 1 to that effect and subsequently respondent No. 1 managed electric connections for them without proper sanction. None of the persons named above was examined at the trial to prove

this allegation. On the other hand the petitioner examined one Chuhar Singh who belongs to a different Mohalla of his village who appeared as PW. 31. As per this witness the residents of Jhugian Mohalla of village Nangal Kalan told respondent No. 1 that they had various grievances out of which the most important was regarding light. Respondent No. 1 thereupon questioned those people if they would vote for him if he removed their grievances. The persons making grievances then gave their assurances. Respondent No. 1 thereupon warned them that in case they did not vote for him, the electric connections installed would be withdrawn. The version given by this witness looks too unnatural to inspire confidence. Otherwise also when asked to give the names of the persons who ventilated their grievances before respondent No. 1, the witness named S/Shri Shingara, Mangatu, Charan Jit and Dalip Singh. He thus named only one person out of the five persons named by the petitioner in the petition. Apart from this, there is no evidence on the record to suggest if the persons named in the petition and referred to above got any electric connection after 2-2-1985. Chuhar Singh (PW 31) on the other hand admitted in his cross-examination that electric supply in their village existed for the last 5 to 6 years.

The next instance as it relates to the same village Nangal Kalan but of a different Mohalla, namely, Mohalla Sultana. According to the petitioner, respondent No. 1 on the same day made similar offers to S/Shri Udhm, Mihi Mal, Gulzari, Ram Chand and Amar Nath of that Mohalla and in pursuance of such promises, about 18 connections were given to the residents of this Mohalla. All these connections, according to the witness, had been installed on or about 3rd March, 1985, without following the prescribed procedure. No evidence, however, has been adduced on the record to show if respondent No. 1 visited Mohalla Sultana, if any demands were made to him for installation of electric connections, if any bargains were settled or if any electric connections were actually supplied in that area during the election days.

The next instance pertains to similar promises alleged to have been made to the residents of village Butt Kalan. Again there is no evidence adduced to support this allegation. }

The next allegation is that respondent No. 1 had held a meeting at village Pabowal on 27th February, 1985, where he induced the voters to vote for him on the assurance that he would get the electric connections for them immediately. Latter in pursuance of such promises, electric lines were actually laid and power made available to the residents on second March, 1985.

PW 26, Ajit Singh is the Chowkidar of Village Pabowal. No question was put to him about the visit of respondent No. 1 to that village on 27-2-1985 nor about the fact that any electric lines were laid and power supplied in the village towards the end of February or beginning of March 1985. The only witness who deposed on this point is PW. 25, Shri Onkar Singh. According to him, the bargain was settled between the resident of the Village and respondent No. 1 on 27-2-1985 for the supply of electric energy and on the very next day seven electric poles were installed in the village. In cross-examination he deposed that respondent No. 1 himself brought all the electric poles on the very next day. It looks difficult to swallow such an absurd version without any corroboration. Respondent No. 1 denied on oath having visited village Pabowal on 27-2-1985 or having settled any bargain with electorate there or having arranged the electric supply to that village as alleged. An incident of this type could not have escaped the notice of the Chowkidar, who as already observed, was never questioned on this subject. There is thus no substance in this allegation either.

It is then alleged that on the same day, that is, 27-2-1985 respondent No. 1 held another meeting at village Lower Pandoga where also he made similar promises to the villagers for arranging electric connections in return of their promises to vote for him. No evidence, however, was adduced to support this allegation. I need not, therefore, refer to further details of this instance.

The other instances of the corrupt practice imputed to respondent No. 1 are detailed in sub-paragraphs (g) and (h) of the petition. I would refer to only such of the instances in these sub-paragraphs which the petitioner later cared to establish at the trial and would ignore others in support of which no evidence has been adduced.

On 8-2-1985 respondent No. 1 is alleged to have held meetings in three different Mohallas of village Dulehar. In these meetings bargains are alleged to have been settled between the residents of the Mohallas and respondent No. 1 who induced them to vote for him and promised that he would get them public taps installed. After obtaining promises of the voters, respondent No. 1 got connections installed by putting pressure on the officials of the Irrigation and Public Health Department during the period 11th to 15th February, 1985.

PW 21, Hardev Singh and PW.23, Rajinder Kumar are the only residents of village Dulehar who have been examined at the trial in support of the above mentioned allegations. According to Hardev Singh (PW.21), respondent No. 1 accompanied by one Dhani Ram visited village Dulehar on 8-2-1985 where about hundred persons collected and there was some talk about votes. Some persons from the gathering then complained that the link road had not been completed upon which respondent No. 1 promised to get the link road completed in a day or two. The gathering then shouted slogans and assured respondent No. 1 that they would vote for him. This witness did not utter a single word about the demand of water connection by any villager nor of any promise held by respondent No. 1 to instal water connection in the village. The other witness Rajinder Kumar, of course, did talk of the water complaints. According to him, some persons from the gathering complained that there was no connection for drinking water in their Mohalla on which respondent No. 1 told that he would depute the Executive Engineer the very next day and he would get the needful done. Shri S.S. Malhotra who was the X.E.N. Irrigation and Public Health Department of this area and the authority incharge of water supply appeared as RW. 28 and exposed this witness by deposing that water connections in village Dulehar had already been installed during October 1984. The allegation that the villagers made demand for water supply in February 1985 thus makes no sense.

The next allegation is that in the meeting at Bathri held on 6-2-1985, respondent No. 1 promised to provide water connections and water taps in consideration of the voters voting for him. Sher Singh Pradhan is alleged to have conveyed to respondent No. 1 on behalf of himself and the electorate that he would vote for respondent No. 1. I have already discussed the evidence pertaining to the meeting at village Bathri and disbelieved the same. I may, however, add that as per testimony of Shri Mohinder Singh (PW 30) the Sub-Divisional Officer Irrigation and Public Health (PWD) Mehatpur who was the concerned authority for installation of water connections in village Bathri, the public taps were installed in that village on 5-2-1985, that is, a day before the date of the alleged meeting of respondent No. 1. There was thus no occasion for the residents of this village to demand water connections on 6-2-1985.

The other allegation in this connection relates to village Saloh. There is, however, no mention in the petition as to when and by whom the demand for supply of water in village Saloh was made and when the water connections were installed. PW.15, Ram Singh, whose evidence has already been discussed above did state that such demand was raised in the meeting held at Saloh on 6-2-1985 by respondent No. 1 and the very next day the Executive Engineer had visited their village to enquire about the place where the connections were to be installed. The Executive Engineer, Shri S.S. Malhotra, however, appeared as RW 28 and denied on oath if he ever visited village Saloh on or about 7-2-1985. On the other hand he deposed the water connections in village Saloh were installed in December, 1984. The witness was not cross-examined at all on this point. There is thus no reason to believe this witness that the water connections in village Saloh were installed during December 1984. There was, in these circumstances, no need for the electorate to make any demand for water connections in February, 1985.

The next allegation is that in his meeting at village Dulehar held on 8-2-1985, respondent No.1 settled a bargain with the electorate to provide them with a link road in consideration of their promises to vote for him and then got the work of laying down the link road started on 21-2-1985. In this connection Shri Sohan Lal Gupta, Executive Engineer, B&R (PWD) deposed from his record which he had brought in Court that the buget for construction of Dulehar link road was sanctioned during November 1984 and the construction work had been started in January, 1985. This work was, however, still in progress. The witness was not put a single question in cross-examination. It thus looks safe

to conclude that the budget for the construction of Dulehar link road had been sanctioned in November 1984 long before the announcement of the election programme. Not only that but the construction of this road had also been started some time in January 1985. There was thus no occasion for the residents of that village to make a demand for that link road in February 1985.

The other allegations of corrupt practice imputed to respondent No. 1 in para 11 have not been made the subject matter of evidence adduced in the case and hence are not being referred to. The allegations in support of which the evidence has been adduced have either remained unestablished or found false. I, therefore, find that respondent No. 1 did not commit the corrupt practice of bribery as alleged in para No. 11 of the petition and decide this issue also against the petitioner.

Issue No. 4:

The allegations on which the corrupt practice of undue influence forming subject matter of this issue is based are practically the same which gave rise to issues No. 2 and 3 above. In view of my discussion and findings on the said two issues I decide this issue also against the petitioner.

Issue No.5:

This issue was not pressed on behalf of respondent No. 1 and as such is found in favour of the petitioner.

Issue No.6:

The allegations in the petition as found in para No. 9 in support of this issue are that "the Returning Officer did not follow the rules and he counted the postal ballot papers at the back of the petitioner and simply mentioned those ballot papers in the result sheet. No scrutiny of those postal ballot papers was done in the presence of the petitioner or his counting agents."

The only evidence appearing on the record relevant for the purposes of this issue comprises of the oral statement of the petitioner as also the oral statement of respondent No. 1 while in the witness box the petitioner had to admit that the postal ballot papers were opened and counted in his presence though he did complain that he was to sit at a place from where he could not see the postal ballot papers. This version is obviously inconsistent with the plea taken in the petition. The petitioner further stated that he had requested the Returning Officer to show the postal ballot papers to him but that request was not proceeded to. Now, this version does not find mention in the pleadings. Nor does it find mention in the application which the petitioner made to the Returning Officer for recount of ballot papers wherein he was supposed to have mentioned all his grievances and a copy of which is found at Ex. P-1. Apart from this none of the counting agents of the petitioner who were present during the process of counting cared to support him on this point. Respondent No. 1 on the other hand made a categorical statement in the witness box that all the postal ballot papers which were the first to be counted were counted in presence of all the candidates and none of them raised any objection against such counting. No suggestion to the contrary was put to him in the cross-examination. The version that the postal ballot papers were counted at the back of the petitioner, therefore, cannot be accepted. This issue is also against the petitioner.

As a result of my above findings I dismiss this election petition with costs which are assessed at Rs. 2000/-.

The Registrar of this Court shall forthwith intimate the substance of this judgment to the Election Commission of India, New Delhi, as also the Speaker of the Legislative Assembly of the State of Himachal Pradesh. An authenticated copy of this judgment may be sent to the Election Commission of India, New Delhi, as soon as possible.

December 4, 1985.

Attested
Superintendent (Judicial),
High Court of Himachal Pradesh.

T. R. HANDA, J.

By order,
T.D. GUPTA,
Under Secretary,
Election Commission of India.